Supreme Court, U.S.
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No.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1996

S. FRANKLIN BURFORD, on his own behalf, as a shareholder in the dissolved Snowshoe Company, and on behalf of all other shareholders in that dissolved corporation, that were not represented by Steptoe & Johnson in connection with the facts stated herein, ---------- *Petitioner,*

versus,

STEPTOE & JOHNSON, a West Virginia Partnership, ---------- *Respondent.*

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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30PP

QUESTIONS PRESENTED FOR REVIEW

1. Is a citizen's First Amendment right to bring suit and have a "day in court" on causes of action against another person destroyed, under the doctrines of res judicata or collateral estoppel or any other doctrine, by previous court actions, brought by that citizen and his predecessor in interest, against that other person, that resulted in court rulings that neither that citizen nor his predecessor in interest had "standing"; if such a suit is brought by that citizen after all of the impediments to "standing" have been removed by court action?

2. Does either res judicata or collateral estoppel bar a suit (a) that the courts had previously prohibited the plaintiff from bringing; (b) that is brought after the prohibitions are removed by a court; (c) that involves not a single right, question or fact that was (i) distinctly presented to, and (ii) directly determined by a court of competent jurisdiction in a prior case involving the same parties or their privies; and (d) in which neither the District Court nor the Circuit Court of Appeals has ever found, stated or pointed to such a prior determined right, question or fact?

NOTE - PARTIES TO THE PROCEEDING

Petitioner, S. Franklin Burford, majority shareholder in the dissolved Snowshoe Company, also represents the interests of the following minority shareholders in that dissolved corporation:

Joseph F. Burford

Hazel K. Burford

Nola Burford Legg

Albert Paine

David A. Wallace

John Williams

(Supreme Court Rule 14.1(b)).

NOTE - SNOWSHOE COMPANY, A DISSOLVED CORPORATION

The Snowshoe Company had, prior to dissolution, no parent corporation and no subsidiaries (other than wholly owned) (Supreme Court Rule 29.6).

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II. Certiorari Should be Granted Because the Fourth Circuit Has Decided a Federal Question that Conflicts With the Applicable Decisions of This Court in *Montana v. United States*, 440 U.S. 147 (1979) and *Southern Pacific R.R. Co. v. United States*, 168 U.S. 1 (1897) 9-10

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OFFICIAL AND UNOFFICIAL REPORTS

None of the opinions below has been officially reported. The Fourth Circuit Unpublished, Per Curiam Opinion, filed August 5, 1996 is reprinted in the Appendix beginning at 1a. The District Court's Memorandum Opinion and Judgment are reprinted, respectively, in the Appendix, at 4a and 7a. The Fourth Circuit Order denying rehearing, filed August 30, 1996 is reprinted in the Appendix, beginning at 8a.

STATEMENT OF JURISDICTION

The judgment for which review is sought was rendered by the United States Court of Appeals for the Fourth Circuit on August 5, 1996, with rehearing denied on August 30, 1996. Jurisdiction before the United States Supreme Court is founded upon 28 U.S.C. §1254(1) and 28 U.S.C. §2101(c).

PROVISIONS OF LAW INVOLVED

Amendment 1 to the Constitution of the United States, in relevant part, provides:

> "Congress shall make no law ***abridging*** the right of the people ***to petition the Government for a redress of grievances."

No.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1996

S. FRANKLIN BURFORD, on his own behalf, as a shareholder in the dissolved Snowshoe Company, and on behalf of all other shareholders in that dissolved corporation, that were not represented by Steptoe & Johnson in connection with the facts stated herein, ---------- *Petitioner,*

versus,

STEPTOE & JOHNSON, a West Virginia Partnership, ---------- *Respondent.*

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

This petition for certiorari results from a determination by the United States Court of Appeals for the Fourth Circuit that the suit in this case is barred, under the doctrines of res judicata or collateral estoppel, by previous court rulings that held, only, that neither the plaintiff (shareholders) in this suit, nor the plaintiffs' predecessor in interest (the plaintiffs' dissolved corporation) had "standing"; even though this suit was only commenced after all impediments to "standing" had been

removed and abolished by court action.

The facts material to the questions presented are as follows:

1. The most important fact is a negative fact. That negative fact is that there is no right, question or fact in this case that has ever been determined by any court, in any prior case between the parties or their privies. Moreover, neither the District Court nor the Fourth Circuit has ever, even, attempted to find, point to or, mention such a prior determined right, question or fact. Also, the only question in this case is whether or not Steptoe & Johnson has a tort liability to the Snowshoe Company (now, the shareholders of the dissolved Snowshoe Company) , And, not only has that question never been determined by any court; but, from May 24, 1985 to August 12, 1994, the Snowshoe Company and its shareholders were directly prohibited by action of the District Courts from even presenting that question to any court.

2. In July of 1983, the law firm of Steptoe & Johnson, secretly, joined Shenandoah Federal Savings and Loan Association, Shenandoah's Executives and others, in a fraudulent scheme to take the Snowshoe Resort from the Snowshoe Company. That fraudulent scheme was successfully concluded by Steptoe & Johnson, in October, 1986.

3. In litigation against Shenandoah (N.D.No. 84-254-E), the Snowshoe Company, on March 6, 1985, suspecting, but not knowing, Steptoe & Johnson's involvement in the fraud, subpoenaed Steptoe & Johnson Partner Patrick D. Deem for a discovery deposition on March 28, 1985. On March 25, 1985, Steptoe & Johnson Partner Michael L. Bray filed a motion to quash the Deem deposition subpoena; and, one (1) day later, on March 26, 1985, District Court Judge Robert E. Maxwell, *ex parte* (no notice to the Showshoe Company or its attorneys), quashed the Deem deposition subpoena.

4. Two (2) months after Deem's deposition subpoena was quashed, Judge Maxwell, on May 24, 1985, in accordance with a secret telephone prearrangement with Steptoe & Johnson

Partner Michael L. Bray and without the evidentiary hearing required by 11 U.S.C. §1112(b); (1) converted the Snowshoe Company Chapter 11 Reorganization to a Chapter 7 Case; (2) appointed Steptoe & Johnson Partner Michael L. Bray to be the Trustee of the Snowshoe Company Estate; and (3) caused the transfer of all assets (valued, by Shenandoah's appraisers, at $31,500,000.00) of the Snowshoe Company (which included the causes of action now in this case) to be transferred to Steptoe & Johnson Partner Michael L. Bray, upon Bray's filing of a Bond of only $100.00, with only the Court Reporter as surety.

5. On December 2, 1985, the Fourth Circuit (Case No. 85-1558), after observing that 11 U.S.C. §1112(b) required an evidentiary hearing, decided that it (the Fourth Circuit) would make an exception for Judge Maxwell and affirmed, per curiam, his (Judge Maxwell's) conversion of the Snowshoe Company Chapter 11 case to a Chapter 7 case.

6. Having found some evidence of Steptoe & Johnson's fraud, two Snowshoe Company Stockholders (S. Franklin Burford and Joseph F. Burford) filed, in the Southern District Court of West Virginia, on July 13, 1987, a suit against Steptoe & Johnson. That suit alleged the loss of value of the plaintiffs' Snowshoe Company Stock, which loss had been caused by Steptoe & Johnson's fraud on the Snowshoe Company. After *ex parte* staying all discovery, holding no hearing and taking no evidence, the West Virginia Southern District Court (S.D.No. 2:87-0775) ruled, on February 1, 1988, that (as the Snowshoe Company was then active and undissolved) the Plaintiffs/Stockholders had no "standing" to sue for the loss in value of their stock.

7. On October 13, 1987, the Snowshoe Company, by motion in the Snowshoe Company Bankruptcy case (N.D.BK.NO. 85-00093-C), sought; (a) a termination of Bray's authority to block a suit against his (Bray's) law firm of Steptoe & Johnson and (b) the authority of the Court to bring suit on the causes of action now in this case. After a delay, by the Court, of over three (3) years, and, without discovery, evidence or any

trial or hearing, District Judge Robert A. Merhige, Jr., ruled (N.D. NO. 87-148-E), on November 30, 1990, that the Snowshoe Company lacked "standing" to seek authority to sue, as only Steptoe & Johnson Partner Michael L. Bray had the authority to authorize a suit against Steptoe & Johnson.

8. On November 13, 1991, the Fourth Circuit (NO. 91-1418-91-1432), without opinion, affirmed Judge Merhige's ruling, per curiam. On February 24, 1992, the Supreme Court (NO. 91-1172) denied certiorari.

9. On May 6, 1994, the Snowshoe Company filed a "fraud on the court" suit (N.D.NO. 5-94-32), asking the Court to void Judge Merhige's ruling, and permit the Snowshoe Company to sue Steptoe & Johnson. District Judge Frederick P. Stamp, Jr., in that "fraud on the court" suit; without taking any evidence, without holding a trial or any hearing (including required hearings), ruled, on December 20, 1994, that:

> (a) The Snowshoe Company's "allegations of collusion between the parties and the judges of this district, if true, would constitute a fraud on the court"; (b) Judge Merhige's ruling, on the Snowshoe Company's lack of "standing" and Bray's authority would not be voided; (c) *sua sponte*, moved to impose sanction on the Snowshoe Company's attorney; and (d) summary judgment for Steptoe & Johnson would be entered.

Later, Judge Stamp disqualified himself and transferred the case to District Judge William M. Kidd. Without any trial, hearing or any evidence, Judge Kidd, on November 29, 1995 (more than eleven (11) months after Judge Stamp's sanction motion and more than eight (8) months after the filing of the suit in this case), ORDERED a $21,384.13 sanction against the Snowshoe Company's attorney.

10. On August 12, 1994, (three months after the filing of the "fraud on the court" suit and four months prior to Judge Stamp's refusal to terminate Bray's authority over the filing of suit), the Snowshoe Company Chapter 7 case was closed by the Bankruptcy Court and all authority of Trustee Michael L.

Bray terminated (thereby making Judge Stamp's later refusal to terminate Bray's control over the filing of suit a moot decision). As the Snowshoe Company had been earlier dissolved, the closing of the Snowshoe Company Chapter 7 case also resulted in the abandonment of the causes of action now in this case and the devolution of those causes of action to the plaintiff in this case (the dissolved Snowshoe Company Shareholders). Accordingly, all of the former impediments to the "standing" of the plaintiff in this case to sue on the causes of action against Steptoe & Johnson were removed.

11. On March 23, 1995, the verified complaint in this case along with 102 Requests for Admission and the 43 documentary exhibits incorporated into those Requests were served on Steptoe & Johnson and filed with the Circuit Court of Harrison County, West Virginia.

12. On April 5, 1995, 15 Interrogatories were served on Steptoe & Johnson and filed with the Circuit Court of Harrison County, West Virginia.

13. On April 12, 1995, Steptoe & Johnson removed this case to the District Court For The Northern District of West Virginia, under 28 U.S.C. §1441 and 28 U.S.C. §1367(a), thus giving that District Court Jurisdiction. Steptoe & Johnson has never filed an Answer to the Complaint nor has it ever filed a response to or answered any of the Requests for Admission or Interrogatories.*

14. On April 20, 1995, Steptoe & Johnson filed a Motion to Dismiss and to Stay Discovery. The Motion to Dismiss purported to be under Fed.R.Civ.P. 12(b) (6). However, that

* On April 21, 1995, Steptoe & Johnson did serve on the plaintiff and file with the Circuit Court of Harrison County an objection to the Requests for Admission on the grounds that, because of the removal of this suit on April 12, 1995, discovery in the Circuit Court of Harrison County was "stayed". The Circuit Court of Harrison County, of course, ruled that, because of the earlier removal, it had no jurisdiction over anything in this suit. Steptoe & Johnson has never objected to responding to the Requests for Admission in the Federal Court.

motion, in no way, questioned anything in the complaint; but, only, raised the Fed.R.Civ.P. 8(c) affirmative defenses of res judicata and collateral estoppel (on which the defendant has the burden of proof).

15. As the defendant (a) had filed no Answer and (b) had not raised res judicata and collateral estoppel in any manner authorized by the Federal Rules of Civil Procedure, the plaintiff, on April 21, 1995, made a Motion for a Default Judgment.

16. On July 14, 1995 (more than 100 days after service of the Requests for Admission and Interrogatories) the Court (Judge William M. Kidd) entered an ORDER that (a) granted the defendant's Motion to Stay Discovery; and (b) converted the defendant's Motion to Dismiss into a Motion for Summary Judgment.

17. On July 27, 1995, the plaintiff made a Motion for the Court to Adjudicate that the Truth of all Facts Stated in the Complaint had been Admitted by the Defendant.

18. On August 14, 1995, the defendant filed unauthenticated Exhibits (consisting of copies of Opinions, briefs and other papers from prior cases) .

19. On August 22, 1995, the plaintiff filed affidavits proving (a) all allegations of the Complaint and (b) that there is no right, question or fact in this case that had been (i) distinctly put in issue; and (ii) directly determined by a court of competent jurisdiction, in a prior case between the same parties or their privies.

20. Also, on August 22, 1995, the plaintiff filed a Motion for Judicial Notice (facts proved by Court Records) .

21. The defendant has never filed an affidavit denying, or, in any other way denied, anything in the verified complaint, the plaintiff's affidavits or the Requests for Admission.

22. On November 29, 1995, Judge William M. Kidd, without any hearing (including the hearings required by Fed.R.Civ.P. 56 and Fed.R.Evi. 201(e)) held that res judicata and collateral estoppel barred this suit; granted the defendant's Motion to Dismiss; and denied all other pending motions.

23. On December 1, 1995, the plaintiff appealed to the United States Circuit Court of Appeals for the Fourth Circuit.

24. After restricting consideration of this case to the limitations of its own Local Rule 34 (b) , and without oral argument, the Fourth Circuit, on August 5, 1996, affirmed, per curiam.

25. Many of the facts in this case have been alleged; but, never denied, found true or false or in any way litigated in any case, not even this one. However, both the District Court Opinion and the Circuit Court Opinion allude that the plaintiff "could have" or "should have" raised the claims in this case in prior cases. Those false assertions were made by Judges that full well knew that the plaintiff, in this case, and his predecessor in interest, were barred by District Court actions from presenting the causes of action in this case to any court, during the period from May 24, 1985, to August 12, 1994. Therefore, the plaintiff, "could not have" and "should not have" made such a presentation.

26. On August 30, 1996, the Fourth Circuit ORDERED that the Petition for Rehearing, in this case, was denied.

ARGUMENT

I. Certiorari Should be Granted Because the Fourth Circuit Has Decided a Federal Question of Constitutional Law That Conflicts with the Applicable Decisions of (A) This Court in *Bounds v. Smith*, 430 U.S. 817 (1977); (B) The Ninth Circuit in *Soranno's Gasco, Inc. v. Morgan*, 874 F.2d 1310 (9th Cir. 1989); and (C) The Fourth Circuit's own Decision in *Timmerman v. Brown*, 528 F.2d 811 (4th Cir. 1975).

A direct conflict in decisions exists within the Fourth Circuit, itself. That Court has, previously, specifically recognized that even State Prisoners have First and Fourteenth Amendment rights to air their grievances and to have access to judicial

procedure to redress them. *Timmerman v. Brown*, 528 F.2d 811 (4th Cir. 1975). However, in this case, where it is citizens/ shareholders, and not prisoners, that have grievances, the Fourth Circuit has held that their grievances can never be the predicate for a filed suit, or heard in a court in accordance with judicial procedure. The Fourth Circuit reasoned that that conclusion must stand because the District Court (approved by the Fourth Circuit), for over nine years, granted to a partner in the defendant (Steptoe & Johnson) law firm the sole control (as a court appointed trustee) over whether or not such a law suit could be filed.

What an astounding paradox: It is only one of the Foxes that could decide if the Chickens would be permitted to air their grievances, against all of the Foxes, in a court of law. And, when that one Fox's power of decision was abolished, then, the District Court decided that no one, not Chicken or Fox, can ever bring suit or have a "day in court", because no one presented the grievances to a court while that one Fox was the only person that had the power of decision. Wow!

Of course, the one Fox (Michael L. Bray) should never have had that power of decision. But, that is water over the dam. He did have that power of decision for nine years and that power of decision was abolished, by a court, prior to the filing of the suit in this case. The Chickens (plaintiffs/ shareholders) are now entitled to their "day in court" against all the Foxes (Steptoe & Johnson). And, as this Supreme Court has held, that "day in court" is guaranteed to the Chickens by the First Amendment to the United States Constitution. *Bounds v. Smith*, 430 U.S. 817 (1977); See also *Soranno's Gasco, Inc. v. Morgan*, 874 F.2d 1310 (9th Cir. 1989).

II. Certiorari Should be Granted Because the Fourth Circuit Has Decided a Federal Question that Conflicts With the Applicable Decisions of This Court in *Montana v. United States*, 440 U.S. 147 (1979) and *Southern Pacific R.R. Co. v. United States*, 168 U.S. 1 (1897).

What are the doctrines of res judicata and collateral estoppel? It is very simple: If a court, in a case between the same parties or privies has directly determined a right, question or fact; then, as to that right, question or fact, both parties have already had their First Amendment right to a "day in court" on such right, question or fact and both are bound by that determination. And, either party, plaintiff or defendant, may take advantage of that determination.

Specifically, this Supreme Court has held in *Montana v. United States*, 440 U.S. 147 (1979), that:

> "A fundamental precept of common law adjudication, embodied in the related doctrines of collateral estoppel and res judicata, is that a " right question or fact distinctly put in issue and directly determined by a court of competent jurisdiction... cannot be disputed in a subsequent suit between the same parties or their privies..." *Southern Pacific R.R. Co. v.United States*, 168U.S. 1, 48-49."

The problem in the case now before this Court is that there is no right, question or fact that was directly determined by any court in a suit between the parties or their privies. Indeed, the evidence, in this case, proves that there is no such right, question or fact. Moreover, neither the defendant, Steptoe & Johnson (who has the burden of proof on this issue), nor either the District Court or the Circuit Court has ever, even attempted to point to such a right, question or fact.

Oh; Yes: Both the District Court and Circuit Court threw-out the idea that the plaintiff "should have" or "could have" presented such a right, question or fact, in a prior case. That idea of "should have" or "could have" is totally destroyed, in this case, by the fact that, from May 24, 1985, to August 12, 1994, the plaintiff and his predecessor in interest were prohib-

ited from presenting such a right, question or fact to any court and that prohibition was confirmed by three District Court Judges on three separate occasions.

Res judicata and collateral estoppel, as defined by this Supreme Court, just has no application to this case.

III. Certiorari Should be Granted Because the Fourth Circuit Has Held that Causes of Action, Under Both Federal and State Law, Can Accrue to American Litigants, on which No One May Have a Suit and a "Day In Court"; Thereby (A) Ignoring the Requirements of the First Amendment to the Constitution; and (B) Requiring the Exercise of This Court's Power of Supervision.

The plaintiff in this case and his predecessor in interest have, for more than eleven years, sought, by every means available under our laws and Federal Rules of Civil Procedure, to bring before a court the causes of action against Steptoe & Johnson that resulted in the fraudulent loss of the Snowshoe Resort, which was then worth $31,500,000.00 and which was recently sold for much more than that amount. Each such effort was met by Federal Judges who barred all discovery, held no trials or hearings (including many hearings required by the Federal Rules of Civil Procedure) and decided that the plaintiff had no "standing". Those Judges decided that there was no "standing" because a partner of Steptoe & Johnson had been given, by a District Court, the sole power to decide whether or not Steptoe & Johnson could be sued on that fraud. And, even though that Steptoe & Johnson partner's power was terminated, by court action, thereby eliminating all impediments to "standing"; District Judge William M. Kidd has boldly held, in this case, without any facts to support the conclusion, that res judicata and collateral estoppel now prevent any one, at any time, from having a suit and a "day in court" against Steptoe & Johnson.

Judge Stamp, in confirming Bray's authority to stop the

plaintiff from having a "day in court", did go so far as to acknowledge that the allegations of collusion between Steptoe & Johnson and Judges of the West Virginia District Court, fully stated a "fraud on the court". However, he (Judge Stamp) did nothing about that alleged "fraud on the court": He took no evidence; he refused to take judicial notice of prior actions of the court; he held no trial; and, he held no hearings (including required hearings) . Oh, I am sorry; he did do something: He had another Judge (Judge Kidd) impose a $21,394.13 sanction on the lawyer that reported the "fraud on the court". Judges Stamp and Kidd thought that lawyer a lesson. I'll bet he'll think twice before he ever again reports, to a court, a "fraud on the court".

It is submitted that the eleven years of judicial misconduct by the Judges of the West Virginia Northern District Court, not only violates the plaintiff's First Amendment Right to a "day in court", but, demands that this Supreme Court exercise its power of supervision over that District Court.

CONCLUSION

The United States Court of Appeals for The Fourth Circuit, by affirming the Memorandum Opinion and Order of the United States District Court for the Northern District of West Virginia, has erred in confirming that the plaintiff has no Constitutional Right to bring suit and have a "day in court", on the causes of action which that plaintiff has against the law firm of Steptoe & Johnson. Therefore, petitioner respectfully urges this Court to reverse the decision of the Court of Appeals and to direct the District Court to hear the petitioner's Complaint in accordance with the law and the Federal Rules of Civil Procedure.

Respectfully submitted,

S. FRANKLIN BURFORD
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APPENDIX

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

Entered: August 5, 1996

No. 95-3110

In Re: S. FRANKLIN BURFORD,

Appellant.

SNOWSHOE COMPANY, a West Virginia Corporation,

Plaintiff,

versus

STEPTOE & JOHNSON,

Defendant - Appellee

Appeal from the United States District Court for the Northern District of West Virginia, at Wheeling. William M. Kidd, Senior District Judge. (CA-94-32-5)

No. 95-3135

S. FRANKLIN BURFORD, on his own behalf, as a shareholder in the dissolved Snowshoe Company, and on behalf of all other shareholders in that dissolved corporation, that were

not represented by Steptoe & Johnson in connection with the facts stated herein,

Plaintiff - Appellant,

versus,

STEPTOE & JOHNSON, a partnership,

Defendant - Appellee.

Appeal from the United States District Court for the Northern District of West Virginia, at Clarksburg. William M. Kidd, Senior District Judge. (CA-95-43-1)

Submitted: June 28, 1996 Decided: August 5, 1996

Before WIDENER, HAMILTON, and MOTZ, Circuit Judges.

Affirmed by unpublished per curiam opinion.

S. Franklin Burford, Appellant Pro Se. James Purnell Davenport, Anne Katherine Toomey, NUSSBAUM & WALD, Washington, D.C.; Robert Gregory McDermott, MCDERMOTT, BONENBERGER, MCDERMOTT & GALLAWAY, Wheeling, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Appeal number 95-3110 is S. Franklin Burford's appeal from the district court's order imposing sanctions pursuant to Fed. R. Civ. P. 11, and 28 U.S.C.A. §1927 (West 1994), in an action he filed on behalf of Snowshoe Company alleging fraud on the court. After granting summary judgment for Defendants, finding the claims barred by Burford's numerous prior actions which raised or should have raised the same claims under the principle of res judicata, the district court imposed monetary sanctions.

Appeal number 95-3135 is Burford's appeal from the district court's order dismissing on the basis of res judicata, his subsequently filed action in which he again raised claims which were or should have been presented in Burford's previous actions.

As no member of the court requested a poll on the suggestion for hearing en banc in appeal number 95-3135, the suggestion for hearing en banc is denied. We have reviewed the records and the district court's opinions and find no reversible error. Accordingly, we deny Burford's motion for a pre-hearing conference and affirm on the reasoning of the district court. *Snowshoe Co. v. Steptoe & Johnson*, CA-94-32-5; Burford v. Steptoe & Johnson, No. CA-95-43-1 (N.D.W. Va. Nov. 29, 1995). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF WEST VIRGINIA

Entered: NOVEMBER 29, 1995

CIVIL ACTION No. 1:95-CV-43 (JUDGE KIDD)

S. FRANKLIN BURFORD,
Plaintiff,

versus

STEPTOE & JOHNSON,
a partnership,
Defendant.

MEMORANDUM OPINION AND ORDER

By Order entered on July 14, 1995, the Court gave notice that it was treating the defendant's motion to dismiss as one for summary judgment to be disposed of as provided in Rule 56, F.R.C.P., and set a briefing schedule. Plaintiff subsequently filed his motion for summary judgment. Said motions have been fully briefed and are ripe for ruling.

Plaintiff S. Franklin Burford has been in litigation with defendant Steptoe & Johnson ("S&J") for more than a decade over Burford's loss, through bankruptcy of the Snowshoe Ski Resort. Burford has repeatedly presented the same accusations of wrongdoing, collusion, and conspiracy by S&J which form the basis of this action, in previous actions before federal bank-

ruptcy judges, federal district court judges and federal appellate panels, who have, without exception, rejected the same *in toto*.[1]

In the action filed just before this action, styled *Snowshoe Company v. Steptoe & Johnson*, Civil Action 5:94-CV-32, Chief Judge Stamp, in a Memorandum Opinion and Order granting S&J's motion for summary judgment, fully and exhaustively recounts the tortured history of Burford's litigation against S&J. Also illuminating is the Memorandum Order by Judge Copenhaver granting S&J's motion to dismiss in Burford's civil RICO action filed in the United States District Court for the Southern District of West Virginia, styled *S. Franklin Burford, et al. v. Steptoe & Johnson, et al.*, Civil Action No.2:87-0775.

The Court need not repeat these past judicial proceedings and rulings which are of record.[2] Suffice it to say, that all of Burford's claims asserted in this action arise from the same nucleus of operative facts which have already been or could have been heard, considered, and rejected in prior judicial proceedings in which final judgments on the merits have been entered and affirmed. As such, res judicata precludes this Court from revisiting in this action the propriety of those prior adverse final judgments on the merits resolving the same questions between the same parties, and bars this action from proceeding. *Aliff v.Joy Mfg. Co.*, 914 F.2d 39, 42 (4th Cir. 1990); *Peugeot Motors of America. Inc. v. Eastern Auto Distributors, Inc.*, 892 F.2d 355, 359 (4th Cir. 1989).

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[1] The Court notes that Burford did file six separate judicial ethic complaints against the five district judges and one bankruptcy judge who had at some time presided over Burford's numerous actions. All of the complaints were found to be without merit and have been dismissed by Chief Judge Ervin of the United States Court of Appeals for the Fourth Circuit.

[2] The pertinent record was filed on August 14, 1995, by S&J as exhibits in this action.

It is therefore ORDERED that the defendant's motion to dismiss is GRANTED that all other pending motions are DENIED, and that this action is hereby DISMISSED with prejudice.

It is further ORDERED that no sanctions be imposed against the plaintiff in this action since S&J has already been awarded monetary sanction of $21,384.13 against Burford on *Snowshoe Company v. Steptoe & Johnson*, Civil Action 5:94-CV-32, by Order entered this day.

Judgement shall be entered accordingly, and this action shall be dismissed with prejudice and removed from the docket of the Court.

The Clerk is directed to send certified copies of this Memorandum Opinion and Order to counsel of record herein.

ENTER:

WILLIAM M. KIDD
SENIOR UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF WEST VIRGINIA

Entered: NOVEMBER 29, 1995

CIVIL ACTION No. 1:95-CV-43

S. FRANKLIN BURFORD,
Plaintiff,

versus

STEPTOE & JOHNSON,
a partnership,
Defendant.

Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

Defendant's motion to dismiss is granted; Judgement is entered accordingly, and this action is DISMISSED with prejudice.

ENTER:

WALLY EDGELL, PH.D.
CLERK
KIM FRAGALE
DEPUTY CLERK

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

Entered: August 30, 1996

No. 95-3110

CA-94-32-5

In Re: S. FRANKLIN BURFORD,

Appellant.

SNOWSHOE COMPANY, a West Virginia Corporation,

Plaintiff,

versus

STEPTOE & JOHNSON,

Defendant - Appellee

No. 95-3110

CA-94-32-5

S. FRANKLIN BURFORD, on his own behalf, as a shareholder in the dissolved Snowshoe Company, and on behalf of all other shareholders in that dissolved corporation, that were not represented by Steptoe & Johnson in connection with the facts stated herein,

Plaintiff - Appellant,

versus,

STEPTOE & JOHNSON, a partnership,

Defendant - Appellee.

On Petition for Rehearing with Suggestion for Rehearing in Banc

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The appellant's petition for rehearing and suggestions for rehearing in banc were submitted to this Court. As no member of this Court or the panel requested a poll on the suggestion for rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

For the Court,
/s/ BERT M. MONTAGUE
CLERK